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Better Business Bureau of Siouxland and Workers Have Rights Too. Case 18–CA–16665

September 12, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has withdrawn its answer to the complaint. On a charge filed by Workers Have Rights Too on November 19, 2002, the General Counsel issued the complaint on February 28, 2003, against Better Business Bureau of Siouxland, the Respondent, alleging that it has violated Section 8(a)(1) of the Act. The Respondent filed an answer to the complaint. On May 6, 2003, however, the Respondent withdrew its answer.

On May 19, 2003, the General Counsel filed with the Board a Motion for Default Judgment and brief in support. On May 22, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by March 14, 2003, all the allegations in the complaint would be considered admitted.

Although the Respondent filed an answer to the complaint, the Respondent withdrew its answer on May 6, 2003. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be true.¹

Accordingly, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

¹ See *Maislin Transport*, 274 NLRB 529 (1985).

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Iowa corporation with an office and place of business in Sioux City, Iowa, (the Respondent's Sioux City, Iowa facility), has operated a service providing information and dispute resolution services for commercial businesses located in the States of Iowa, Nebraska, and South Dakota.

During the calendar year ending December 31, 2002, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 in States other than the State of Iowa.

At all material times, the Council of Better Business Bureaus, Dept. 23, Washington, D.C. (Arlington), has regulated the conduct of the Respondent by requiring the Respondent to abide by its bylaws and standards; by implementing policies regarding the operation of the Respondent, including its hours of operation and the operation of its Board of Directors; by evaluating the Respondent's operations every 3 years; by retaining the authority to expel the Respondent from the Council of Better Business Bureaus; and by otherwise regulating the operation of the Respondent.

In view of the factors described above, at all material times, the Respondent has been a member and integral part of the Council of Better Business Bureaus, Dept. 23, Washington, D.C. (Arlington), a multistate and nonretail enterprise, which provides services similar to those described above to commercial businesses located throughout the United States.

During the time period described above, the Respondent and the Council of Better Business Bureaus collectively derived gross revenues in excess of \$250,000.

We find that the Respondent is an Employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Stephanie Hageman held the position of the Respondent's chief executive officer, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and agent of the Respondent within the meaning of Section 2(13) of the Act.

On about October 31, 2002, the Respondent's employees Linda Ross and Teresa Bokemper (nee Meyers) concertedly sent the Respondent's board of directors and CEO Hageman a letter protesting that the Respondent, by its CEO Hageman, had retaliated against them by changing certain wages, hours, and working conditions.

On about November 6, 2002, the Respondent, by its CEO Hageman, at the Respondent's Sioux City, Iowa

facility, engaged in surveillance of employees because of their protected concerted activities, including the conduct described above.

On about November 6, 2002, the Respondent suspended employees Ross and Bokemper, and, on about November 11, 2002, the Respondent discharged them.

The Respondent suspended and discharged Ross and Bokemper because they engaged in protected concerted activities, including concertedly sending the letter described above, and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby violated Section 8(a)(1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) by suspending and discharging employees Linda Ross and Teresa Bokemper (nee Myers), we shall order the Respondent to make them whole for any loss of earnings and other benefits suffered as a result of their unlawful suspensions and discharges. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We also shall require the Respondent to expunge from its files all references to the unlawful suspensions and discharges, and to notify Ross and Bokemper in writing that this has been done and that the unlawful actions will not be used against them in any way.

The General Counsel's supporting brief states that the Respondent ended its business operations as of April 30, 2003, for economic reasons. Accordingly, we also shall order the Respondent, in the event it resumes the same or similar business operations, to offer Ross and Bokemper full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. Further, because the Respondent ceased operations on April 30, 2003, we shall order it to mail, rather than post, copies of the attached notice to employees.

ORDER

The National Labor Relations Board orders that the Respondent, Better Business Bureau of Siouxland, Sioux City, Iowa, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Engaging in surveillance of employees because of their protected concerted activities.

(b) Suspending or discharging employees because they engaged in protected concerted activities, or to discourage employees from engaging in these activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) In the event the Respondent resumes the same or similar business operations, within 14 days thereafter, offer Linda Ross and Teresa Bokemper (nee Myers) full reinstatement to their former positions, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

(b) Make Linda Ross and Teresa Bokemper (nee Myers) whole for any loss of earnings and other benefits suffered as a result of their unlawful suspension and discharge, with interest, in the manner set forth in the remedy section of this Decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspension and discharge of Linda Ross and Teresa Bokemper (nee Myers), and within 3 days thereafter, notify them in writing that this has been done and that the unlawful conduct will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, a copy of the attached notice marked "Appendix"² to all employees

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

who have been employed by the Respondent at any time since November 6, 2002.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 12, 2003

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| Robert J. Battista, | Chairman |
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| Wilma B. Liebman, | Member |
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| Dennis P. Walsh, | Member |
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT engage in surveillance of our employees because of their protected concerted activities.

WE WILL NOT suspend or discharge you because you engaged in protected concerted activities, or to discourage you from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, in the event we resume the same or similar business operations, within 14 days thereafter, offer Linda Ross and Teresa Bokemper (nee Myers) full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make Linda Ross and Teresa Bokemper (nee Myers) whole for any loss of earnings and other benefits suffered as a result of their suspension and discharge, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful suspension and discharge of Linda Ross and Teresa Bokemper (nee Myers) and, WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful conduct will not be used against them in any way.

BETTER BUSINESS BUREAU OF SIOUXLAND